

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.937 of 2007

Lakshmi

.. Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai - 600 008.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to
issue Habeas Corpus as stated therein.

For Petitioner : Mr.S.Swamidoss Manokaran

For Respondents : Mr.P.Kumaresan

Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Srinivasan @ Burma Seenu, husband of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the wife of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records of the detention order

No.63/BDFGISSV/2007, dated 22.2.2007 passed by the second respondent, to quash the same and to direct the respondents to produce the detenu, now confined in Central Prison, Puzhal before this Court and to set him at liberty.

3. On the basis of a complaint lodged by one Murali that on 10.1.2007 at about 14.00 hours, the detenu and one Babu threatened him at the knife point and forcibly took a gold chain, gold ring and a cell phone and also threatened the public who came for his rescue that they would be killed and hurled the soda water bottles against them and made them to run on all sides seeking shelter resulting in traffic dislocation, the detenu was arrested and a case was registered in Crime No.20/2007 on the file of J2, Adyar Police Station, for the offences punishable under Sections 341, 427, 448, 392 and 506(ii) IPC.

4. The second respondent, taking the above case as a ground case and sixteen adverse cases pending against the detenu for the offences punishable under Sections 379, 394, 397 and 392 IPC and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

5. The main contention of Mr.S.Swamidoss Manokaran, learned counsel for the petitioner is that the detention of the detenu was not communicated to his family members.

6. The learned Additional Public Prosecutor invited our attention to the requisition for remand wherein it is stated that the family members of the detenu have been informed about the detention of the detenu. To substantiate the same, the learned Additional Public Prosecutor invited our attention to the arrest memo, where the receipt for sending telegram was found inserted.

7. We have perused the materials available on record and given careful consideration to the submissions of both sides.

8. A perusal of the records, in particular, the arrest memo reveals that the receipt for sending telegram has been inserted in it. Neither the contents of the telegram, nor the address to which the telegram was sent were produced before this Court. A mere receipt for sending telegram without producing the contents or the address to which it was sent will not be a substantial evidence to prove that the family members of the detenu were informed about the detention of the detenu and his place of detention.

9. The object and purpose of informing the members of the detenu's household in writing of the passing of the order of detention and taking in custody of the detenu as also the place of detention immediately after the detenu is taken in custody pursuant to the order, is that the family members of the detenu should not be kept in darkness by withholding the information about the passing of the order of detention and the place of detention thereby preventing them from having any access and from rendering any help or assistance to the detenu and similarly the detenu should not be deprived of the privilege of meeting his relations and getting any help or assistance, vide Union of India v. Vasanbharathi, [1990] 2 SCC 275.

10. In the case on hand, no material was produced before us to justify that the family members of the detenu have been informed about the detention of the detenu and his place of detention. If that be so, the order of detention is vitiated. This petition must succeed and the same is ordered as prayed for. The detention order dated 22.2.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai - 9.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai - 600 008.

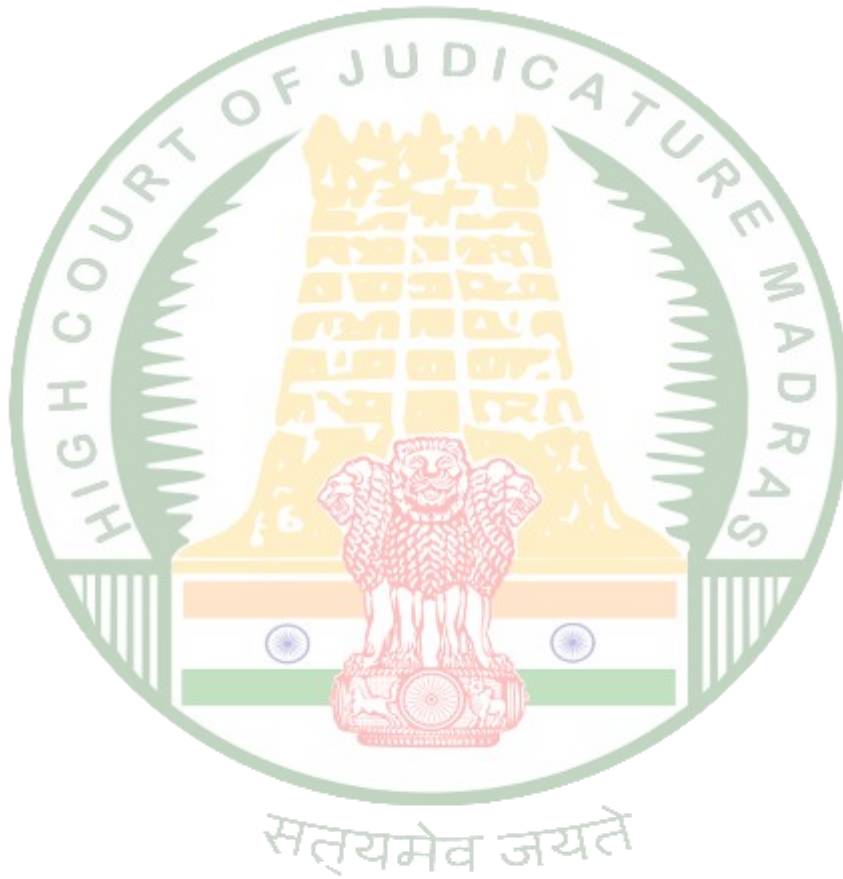
3. The Superintendent
Central Prison
Puzhal, Chennai.

4. The Public Prosecutor
High Court, Madras.

5. THE JOINT SECRETARY TO GOVT
PUBLIC (LAW & ORDER) FORT ST GEORGE, CHENNAI.-9.

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